

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYRONE STEVENS DRUMMOND	:	CIVIL ACTION
	:	
v.	:	
	:	
CRIME PREVENTION ASSOCIATION	:	
OF PHILADELPHIA	:	NO. 00-1540

**MEMORANDUM AND ORDER**

HUTTON, J.

October 5, 2000

Presently before this Court are the Defendant's Motion to Set Aside Entry of Default (Docket No. 9); Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Default (Docket No. 10); and Plaintiff's Ex Parte Motion for Jury Trial on Damages (Docket No. 7). For the reasons stated below, the Defendant's Motion is **GRANTED** and the Plaintiff's Motion is **DENIED AS MOOT**.

**I. BACKGROUND**

On March 24, 2000, Plaintiff filed a complaint alleging various violations of the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA), and Title VII by the Defendants. These allegations included claims that Defendant fired Plaintiff because of his disability, denied Plaintiff leave under the FMLA, terminated Plaintiff as retaliation for exercising his rights under the FMLA, and terminated Plaintiff as retaliation for reporting sexual harassment. Service of the Summons and Complaint was made pursuant to Rule 4 of the Federal Rules of Civil Procedure

on March 31, 2000. The Defendant failed respond to Plaintiff's Complaint.

On May 12, 2000, the Plaintiff filed a Motion to Enter Default. The Court denied Plaintiff's motion with leave to renew as a Praecipe to Enter Default with the Clerk of Court. On June 6, 2000, the Plaintiff properly filed the Praecipe and default was entered. To assess an amount of damages, the Plaintiff filed a Motion for Jury Trial on Damages on June 16, 2000.

On July 25, 2000, Defendant's attorney appeared for the first time on behalf of the Defendant in this matter. On August 2, 2000, Defendant filed a motion to set aside the entry of default claiming that they had failed to respond to the Plaintiff's complaint because it was misplaced or misfiled upon receipt. As part of their Motion, Defendants attached a proposed Answer and Defenses to Plaintiff's Complaint.

The Court now considers the Defendant's Motion to Set Aside Entry of Default and Plaintiffs Ex Parte Motion for Jury Trial on Damages.

## **II. DISCUSSION**

The court has discretion to set aside an entry of default for "good cause shown." Fed. R. Civ. P. 55(c). The court should exercise that discretion liberally in favor of setting aside an entry of default because there is a preference toward resolving cases on the merits. See Maxnet Holdings, Inc. v Maxnet, Inc., No.

98-3921, 1999 U.S. Dist. LEXIS 899, at \*3-4 (E.D.Pa. Feb. 1, 1999). When exercising that discretion, the court must consider: "(1) whether lifting the default would prejudice the defendant, (2) whether the defendant has a prima facie meritorious defense, (3) whether the defaulting defendant's conduct is excusable or culpable, and (4) the effectiveness of alternative sanctions." Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987). The Court must view the facts of the instant case in light of these factors.

**A. Prejudice To The Plaintiff**

The Court must first consider whether setting aside the default will prejudice the plaintiff. In this context, prejudice does not exist simply because the plaintiff is now required to prove his case. Prejudice to a plaintiff occurs when a plaintiff's ability to litigate the claim has been impaired. See Emcasco Ins. Co., 834 F.2d at 74. In the instant case, the litigation has been delayed only slightly and Plaintiff has not claimed that his ability to litigate the case has been impaired. Therefore, prejudice would not result by setting aside the entry of default.

**B. Defenses**

The Court must next consider whether the Defendant has a meritorious defense to Plaintiff's claims. "A claim or defense will be deemed meritorious when the allegations of the pleadings,

if established at trial, would support recovery by plaintiff or would constitute a complete defense." Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 869-70 (3d Cir. 1984). The proffered defense is sufficient if it is not "facially unmeritorious." See Emcasco Ins. Co., 834 F.2d at 74. Defendant's proposed Answer and Defenses contains facially valid defenses to all of Plaintiff's allegations. Therefore, the Defendant has sufficiently alleged meritorious defenses to Plaintiff's Complaint.

### **C. Reasons For The Delay**

In addition, the Court must determine if the Defendant's conduct was culpable. Culpable conduct by the defendant requires a showing of more than mere negligence. See E.I. Du Pont de Nemours and Co. v The New Press, Inc., No. 97-6267, 1998 U.S. Dist. LEXIS 3915, at \*10 (E.D.Pa. March 16, 1998) (quoting Hritz v. Woma Corp., 732 F.2d 1178, 1183 (3d Cir. 1984)). "[C]ulpable conduct means actions taken willfully or in bad faith." Gross v. Stereo Component Sys., Inc., 700 F.2d 120, 123-24 (3d Cir. 1983). Defendant alleges that the Plaintiff's complaint was inadvertently misplaced and never delivered to a responsible person who would have ensured it was answered. There is no allegation that Defendant's misplacing of the complaint was anything other than an mistake. While this conduct may have been negligent, it does not constitute bad faith.

#### **D. Alternative Sanctions**

The default in the instant case was not imposed as a sanction for improper conduct, it was simply a procedural ruling. See Reilly v. Keystone Health Plan East, Inc., No. CIV.A.98-1648, 1998 WL 422037, at \*6 (E.D.Pa. July 27, 1998). Viewed in light of the fact that a default "should be a sanction of 'last, not first, resort'", this factor does not stand in the way of setting aside the entry of default. See Id. (quoting Emcasco Ins. Co., 834 F.2d at 75).

#### **III. CONCLUSION**

After considering the above factors, the Court finds that: (1) the Plaintiff will not be prejudiced by setting aside the entry of default, (2) the Defendant does have meritorious defenses, (3) there was no culpable conduct on the part of the Defendant, and (4) alternative sanctions are not applicable. As a result, the Court finds that good cause exists to set aside the entry of default. In addition, because the entry for default has been set aside, the Plaintiff's Ex Parte Motion for Jury Trial on Damages is rendered moot.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TYRONE STEVENS DRUMMOND	:	CIVIL ACTION
	:	
v.	:	
	:	
CRIME PREVENTION ASSOCIATION	:	
OF PHILADELPHIA	:	NO. 00-1540

O R D E R

AND NOW, this 5<sup>th</sup> day of October, 2000, upon consideration of the Defendant's Motion to Set Aside Entry of Default (Docket No. 9); Plaintiff's Brief in Opposition to Defendant's Motion to Set Aside Default (Docket No. 10); and Plaintiff's Ex Parte Motion for Jury Trial on Damages (Docket No. 7), IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED**.

IT IS HEREBY FURTHER ORDERED that Defendant shall have ten (10) days from the date of this Order to file an answer to Plaintiff's Complaint.

IT IS HEREBY FURTHER ORDERED that Plaintiff's Motion is **DENIED AS MOOT**.

BY THE COURT:

---

HERBERT J. HUTTON, J.